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| 10/729,324 | 12/08/2003 | Bert Van Bruggen | | 1371 |

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EXAMINER

SMALLEY, JAMES N

ART UNIT PAPER NUMBER

3727

DATE MAILED: 08/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/729,324

Applicant(s)

VAN BRUGGEN, BERT

Examiner

James N. Smalley

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 12/08/2003
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: ____

DETAILED ACTION

Claim Objections

1. Claim 11 objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. It appears the claim should depend from claim 8.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 10-11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 10 and 11 are unclear because they are drawn to the combination, but depend from a claim drawn to just the closure cap.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-7 and 10-11 are rejected under 35 U.S.C. 102(b) as being anticipated by Crisci US 4,230,229.

Crisci '229 teaches a cap (10), tamper evident band (13), frangible webs (14) interrupted at a connection point between the cap and band, radially extending grip means (15), locking ring (12), and parallel score lines (18). Examiner notes fig. 4, whereby it can be seen the lines extend the height of the sidewall, and into the peripheral edge of the top wall. It is suggested the Applicant better define the score lines extending across the top wall to overcome the rejection. Furthermore, Examiner notes the bottom

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edge of the cap is read to be the free edge, and the top of the band is read to be the free edge, thus comprising the coplanar relationship of the two free edges.

Regarding claim 10, because the claim is only drawn to the overcap for use with a drum closure, the device is inherently capable of being used in the intended manner, i.e. being applied to a closure such that the bottom of the skirt is in contact with the container wall. It has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 8 and 12-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kline US 6,360,908 in view of Crisci US 4,230,229.

Kline '908, in the embodiment of figures 7-11, teaches a combination drum closure and tamper evidencing closure comprising a cap and band.

Kline '908 fails to teach a tear strip and gripping means.

Crisci '229 teaches a means for removing a closure cap and tamper evidencing band, comprising radially extending gripping means (15) and a band defined by score lines (18).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the tamper evidencing cap of Crisci '229, providing score lines and gripping means, as taught by Crisci '229, motivated by the benefit of providing a means to assist a user in removing the cap.

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8. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kline US 6,360,908 in view of Crisci US 4,230,229 as applied above to claim 8 and further in view of Cooper US 2,010,535.

Kline '908 does not teach the free edge of the skirt being coplanar with the free edge of the tamper evident band. However, Examiner notes the limitation would be met if the skirt were extended to the drum wall (98).

Cooper '535 teaches extending a skirt sidewall to the drum surface at free end (7), and teaches in the first column of the second page of the description, lines 38-45, the feature prevents tampering of the cap with tools.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the skirt of Kline '908, extending it to the drum wall, as taught by Cooper '535, motivated by the benefit of preventing tapering with tools.

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:
See attached PTO-892, citing relevant references.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to James N. Smalley whose telephone number is (571) 272-4547. The examiner can normally be reached on M-Th 9-6:30, Alternate Fri 9-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on (571) 272-4544. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

jns



NATHAN J. NEWHOUSE
PRIMARY EXAMINER